

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Scott Kiley,

Complainant,

vs.

Case 01-08-006

Pacific Bell Telephone Company
And In Touch Communications,

Defendants.

ADMINISTRATIVE LAW JUDGE'S RULING

Summary

This ruling narrows the issues in the proceeding, orders defendant In-Touch Communications to file an answer, re-docket this proceeding pursuant to Expedited Complaint Process, and sets the hearing date.

1. Issues in This Proceeding

The relief requested by complainant, Scott Kiley, defines many of the issues in this proceeding. Kiley requests that the Commission order Pacific Bell Telephone Company (Pacific) and In Touch Communications (In Touch) to: (1) initiate service to complainant, (2) never disconnect complainant from service for any reason, (3) pay monetary damages in excess of \$500,000, as well as "compensation" for constitutional violations, (4) install new phone lines and equipment in complainant's home, and (5) rescind all charges and interest. The

complaint also asks the Commission to bring civil and criminal charges against the defendants.

Other than to initiate service and to provide adequate equipment, the Commission lacks the authority to order the requested relief.

It is well-settled law that the Commission lacks jurisdiction to make an award of damages, such as that requested by complainant. (Marking Products, Inc. v. AT&T, D.01-01-044, at note 8 (2001).)

Similarly, Pub. Util. Code § 453 prohibits the Commission from ordering defendants to provide service on terms and conditions different from those set out in approved tariffs. Public utilities may not discriminate among customers. Complainant's request that we prohibit Pacific and In Touch from disconnecting their service "for any reason" and rescind all charges and interest violates this section. Both Pacific and In Touch have tariffs that set out the grounds upon which the utility may disconnect service for any customer, as well as the charges for services. Those tariffs apply to all customers, including complainant, and we cannot grant complainant an exemption from those tariffs.

The Commission has no jurisdiction to enforce state or federal penal codes, or to initiate a civil court action against Pacific or In Touch on behalf of complainant.

In sum, the only relief requested by complainant that the Commission may grant, upon a proper showing, is an order that Pacific and In Touch (1) respond to complainant's request to initiate service, and (2) if service is provided, to use adequate equipment.

2. In Touch's Answer

As of the date of this ruling, In Touch has not filed and served its answer to this complaint as required by Rule 13 of the Commission's Rules of Practice and Procedure. Prompt response to customer complaints is a condition of In Touch's Certificate of Public Convenience and Necessity issued in Decision 98-04-042. Failure to file an answer is a ground for revocation of the Certificate.

In Touch is hereby ordered to file and serve its answer to the complaint no later than October 29, 2001. Should In Touch fail to file its answer, Commission staff will take the necessary steps to initiate the revocation process.

3. Expedited Complaint Process

Rule 13.2 of the Commission's Rules of Practice and Procedure provides an expedited process for certain consumer complaints against public utilities. This process is only available where the amount of money claimed does not exceed the jurisdictional amount for small claims court. The currently applicable limit is \$5,000 per Code of Civil Procedure § 116.220(a)(1).

The issues remaining in this proceeding are eligible for resolution pursuant to the Expedited Complaint Process. That process would allow for a more efficient resolution of the remaining issues presented by this complaint.

Therefore, this proceeding will be re-docketed and processed pursuant to the Expedited Complaint Process. The hearing required by Rule 13(d) shall be held:

**Tuesday, October 30, 2001
10:00 a.m.
Commission Hearing Room
State Office Building
505 Van Ness Avenue
San Francisco, CA 94102**

IT IS SO RULED.

Dated October 18, 2001, at San Francisco, California.

/s/ MARIBETH A. BUSHEY
Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated October 18, 2001, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.